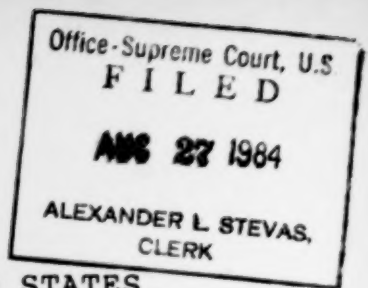


84-171



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

MANUEL KRAMER,
Petitioner

vs.

HON. JOSEPH J. MITCHELL, et al.,
Respondents

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

FRANCIS X. BELLOTTI
Attorney General

THOMAS R. KILEY
First Assistant
Attorney General
Counsel of Record

WILLIAM A. MITCHELL
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
Tel. No. (617) 727-7932

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QUESTION PRESENTED

Whether the Lower Federal Courts erred when they applied the Rooker Doctrine to dismiss a pro se action in which he seeks a review of his state court proceeding.



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STATEMENT OF CASE

This is an attempt by a pro se plaintiff to relitigate in the federal courts an action decided adversely to him in the state courts. The present case has its origin in a divorce proceeding in the Massachusetts Probate

and Family Court. That action involving Mr. Kramer was presided over by the Honorable Edward Ginsburg. As a result of the Probate action, Mr. Kramer initiated an action in the Massachusetts Superior Court (No. 81-4009) against both Judge Ginsburg and Attorney George P. Field, attorney for his wife in the divorce action.

In the state Superior Court action, Kramer alleged that Judge Ginsburg had interfered with his substantive and procedural due process rights during the divorce proceedings. Judge Ginsburg's Motion to Dismiss was heard and allowed by the Defendant Judge Joseph S. Mitchell.

Kramer appealed the dismissal of the state action to the Massachusetts Appeals Court on November 13, 1981.

The Appeals Court, with the Defendants Hale, Grant and Brown sitting, affirmed the Superior Court dismissal and assessed Kramer double costs.

On September 3, 1982, Kramer filed an Application for Leave to Obtain Further Appellate Review with the Massachusetts Supreme Judicial Court. The application was denied on September 30, 1982. Mr. Kramer failed to petition for a writ of certiorari at that time

Instead, the present action was then commenced in the United States District Court for the District of Massachusetts on November 19, 1982. Kramer went to the Lower Federal Court seeking a declaration that the dismissal by the trial court and subsequent affirmation by the Appellant

Courts of the Commonwealth were null and void. Additionally, Kramer would had the District Court assume the jurisdiction of his state action; or, in the alternative remand his action to the Massachusetts Superior Court for a jury trial on the merits.

He named as defendants not only the Superior Court Judge who dismissed his state court action but also the State Appeals Court panel which disposed of his appeal.

On December 23, 1982, Kramer filed a Request for Entry of Default. The Defendants filed an opposition on December 30, 1982. Magistrate Alexander denied Kramer's Request for Entry of Default on April 12, 1983. A Motion to Reconsider that denial was filed on April 19, 1983.

The Defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) on December 30, 1982.

District Court Judge McNaught heard both the Motion for Reconsideration and the Motion to Dismiss on September 12, 1983. He found no error in the Magistrate's denial of Kramer's Request for Entry of Default. Additionally, he allowed Defendants' Motion To Dismiss.

Judgment entered on September 14, 1983.

Kramer filed a Notice of Appeal from that judgment on October 4, 1983. After briefing, the U. S. Court of Appeals for the First Circuit affirmed the decision of the District Court on May 23, 1984. Kramer, who has appeared for himself throughout this judicial

odyssey, then filed this Petition for Writ of Certiorari.

REASON WHY THE WRIT SHOULD BE DENIED

As provided in Rule 17 of the Rules of this Court, "[a] review on writ of certiorari is not a matter of right but of judicial discretion, and will be granted only when there are "special and important reasons therefor". The purpose of the Congressional grant of certiorari jurisdiction to this Court is to permit it to select cases "of such gravity and general importance" as to warrant review of the decision below. In Re Woods, 143 U.S. 202, 206 (1892); see also, Hammerstein v. Superior Court, 341 U.S. 491, 492 (1948) ("[w]rits of

certiorari are matters of grace.").

This case involved a straight forward application of the Rooker doctrine and the instant petition therefore does not raise any "special or important" issues that warrant certiorari review.^{1/}

The First Circuit Properly Ruled
That The District Court Has No
Power To Review A State Court
Judgment.

The actual basis of this action is reflected in the prayers for relief set-out in the pro se complaint. Kramer initially sought, a declaration that the dismissal of his state court action and the affirmation of that

^{1/} Petitioner additionally presents for review the question of error by the district court in denying the entry of default. This was heard de novo by the District Court Judge and clearly within his discretion. Petitioner has alleged no abuse of discretion, therefore respondent has not addressed this issue.

dismissal by the Massachusetts Courts are "null and void". He, additionally, would have had the U.S. District Court assume the jurisdiction of his state civil rights action; or, in the alternative, remand it to the state court for a jury trial on the merits. Essentially, Kramer sought to relitigate his previously adjudicated state claim.

It is axiomatic that where the requested relief in a later filed federal action would invalidate a state court judgment, the federal courts have no jurisdiction to do so. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). This case is very similar to Rooker and involves a simple application of the doctrine bearing the name of the case. In Rooker, a losing

party in a state court action sought a bill in equity in the federal court to declare null and void a state court judgment. This Court explicitly held that the federal district court had no jurisdiction to review the state court judgment. Id. at 416. For the past sixty odd years the Rooker doctrine has been consistently followed by this and the lower Federal Courts.^{2/} In fact, Rooker has been viewed by the courts as a jurisdictional bar to relitigation. Tany v. New York Supreme Court, 487 F.2d 138, 141 (2d Cir. 1973).

Mr. Kramer's allegations of violation of his civil rights during

^{2/} See Rediscovering the Rooker doctrine: Section 1983, Res Judicata and the Federal Courts. 31 Hastings L.J. 1337 (1980).

his state court proceedings are merely a sham to relitigate his original claim. However, a complaint under the Civil Rights Act does not provide the springboard for an unhappy state litigant to raise his federal claims de novo in federal court. P.I.

Enterprise, Inc. v. Cataldo, 457 F.2d 1012, 1015 (1st Cir. 1972). The Civil Rights Act was not designed to be used as a substitute for the right to seek review in this Court, a right the petitioner failed to invoke, nor does it authorize litigants to collaterally attack a final judgment of the highest court of a state and relitigate the issues which it decided. Coogan v. Cincinnati Bar Association, 431 F.2d 1209, 1211 (6th Cir. 1970).

CONCLUSION

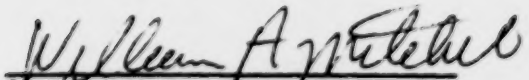
Because it presents no important, unsettled questions of law and because the lower courts disposed of this action in accordance with well-established precedents, the petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

FRANCIS X. BELLOTTI
Attorney General



THOMAS R. KILEY
First Assistant
Attorney General
Counsel of Record



WILLIAM A. MITCHELL
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
Tel. No. (617) 727-7932